No. COA19-384 TENTH JUDICIAL DISTRICT

****
NORTH CAROLINA COURT OF APPEALS
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NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Plaintiff, vs. TIM MOORE, in his official capacity, and PHILIP BERGER, in his official capacity, Defendants.	From Wake County 18-CVS-9806

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DEFENDANT-APPELLANTS' BRIEF
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QUESTIONS PRESENTED

I. Whether the trial court erred in rejecting the political question doctrine and instead determining that the General Assembly lacked sufficient sovereign authority to propose a constitutional amendment.

II. Whether the trial court erred in becoming the first court in the country to declare the Legislature to be a usurper body incapable of passing laws.

III. Whether the trial court erred in striking down two constitutional amendments passed by a majority of North Carolina voters on the grounds that such

amendments could not be validly presented to the voters by the Legislature.

STATEMENT OF THE CASE

Plaintiff[1] filed its Complaint on 6 August 2018, (R p 7), and its Amended Complaint on 9 August 2018, (R p 49). Plaintiff's Motion for Temporary Restraining Order was heard before the Honorable Paul C. Ridgeway on 7 August 2018. (*See* R p 39, 46). Plaintiff argued that the current General Assembly is a usurper body that lacks authority to pass the proposed amendments and that the ballot language used to present the proposed constitutional amendments (specifically, the amendments set forth in Session Laws 2018-117, 2018-118, 2018-119, and 2018-128) to voters violated the Constitution. (R pp 39-45). Judge Ridgeway determined that Plaintiff's challenges were facial challenges that must be heard and determined by a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1. (R pp 46-47). Chief Justice Martin appointed a three-judge panel on the afternoon of 7 August 2018, (R p 48), and the panel scheduled a hearing on Plaintiff's request for interlocutory injunctive relief for 15 August 2018, (R p 85).

On 21 August 2018, the three-judge panel enjoined the amendments as proposed in Session Laws 2018-117 and 2018-118 from being included on the

[1] Clean Air Carolina has not appealed the trial court's decision that it lacked standing, and Defendants refer to the plaintiffs as "Plaintiff" throughout this Brief.

ballot, (R pp 112-13), but found Plaintiff's usurper argument to be a collateral attack on the acts of the General Assembly that did not fall within the jurisdiction of the three-judge panel, (R pp 89-90). A unanimous panel noted, however, that if the argument were to fall within the panel's jurisdiction, the panel would not accept the argument that the General Assembly is a usurper body and would not invalidate any acts of the General Assembly as a usurper body. (*Id*.) Although Plaintiff filed petitions for writs of supersedeas with both the Court of Appeals and this Court (twice) to enjoin the inclusion of the amendments proposed in Session Laws 2018-119 and 2018-128 on the November 2018 ballot, further injunctive relief was denied.

Plaintiff filed its Motion for Partial Summary Judgment on 1 November 2018. (R p 154). Defendants filed their Answer, which included their Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6), on 13 November 2018. (R p 157).

A hearing on Plaintiff's Motion for Partial Summary Judgment and Defendants' Motions to Dismiss was held before the Honorable G. Bryan Collins, Jr. on 15 January 2019. (R p 181). On 22 February 2019, the trial court issued its Order, granting Defendants' Motion to Dismiss Plaintiff Clean Air Carolina under Rule 12(b)(1) and granting Plaintiff's Motion for Partial Summary Judgment. (R pp 181-193). In granting Plaintiff's Motion for Partial Summary Judgment, the trial court declared Session Laws 2018-119 and 2018-

128 void *ab initio* and declared the amendments to the Constitution effectuated by Session Laws 2018-119 and 2018-128 void. (R pp 192-93).

Defendants filed their Notice of Appeal on 25 February 2019. (R p 194). Thereafter, on 26 February 2019, Defendants filed a Motion to Stay in the trial court. (R p 197). Defendants' Motion to Stay was denied by Order entered on 1 March 2019. (R p 214). Defendants then filed their Petition for Writ of Supersedeas and Motion for Temporary Stay with this Court on 4 March 2019. On 21 March 2019, this Court allowed the Petition for Writ of Supersedeas and stayed the 22 February 2019 Order.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

The 22 February 2019 Order of the trial court addressed Plaintiff's usurper legislature argument but did not dispose of Plaintiff's facial challenge to the text of the ballot language for the constitutional amendments at issue. Thus, the trial court has not yet entered a final order. Nonetheless, there are several bases for appellate jurisdiction.

First, pursuant to N.C. Gen. Stat. § 7A-27(b)(4), appeal from any order lies of right directly to this Court where authorized by statute. The statutory authorization for this appeal is N.C. Gen. Stat. § 1A-1, Rule 62(h). Rule 62(h) provides an immediate right of appeal where a declaratory judgment prevents or restrains enforcement of a statute, which is the case here.

Further, §§ 7A-27(b)(3)(a)-(c) also apply to this appeal. Because Plaintiff has dismissed the State Board of Elections and Ethics Enforcement (R pp 178-79), an agency Plaintiff sought to restrain from printing ballots, the only remaining relief sought in the Second Amended Complaint is a declaration that Session Laws 2018-119 and 2018-128 are void, (*see* R pp 151-52). The trial court's 22 February 2019 Order fully resolved the usurper legislature argument raised by Plaintiff and provides all of the relief requested. (R p 192). The remaining claim—the direct facial challenge to the amendments pending before the three-judge panel that also seeks a declaration that the challenged session laws are void, (*see* R p 151)—is now moot; there is no further relief a court could provide than the relief Plaintiff has already received. Thus, the 22 February 2019 Order has the effect of discontinuing the action. *See* N.C. Gen. Stat. § 7A-27(b)(3)(c). To conclude otherwise would leave this case in a trial court loop between the three-judge panel and Judge Collins or another Wake County judge that would prevent a timely review of this Order. *See* N.C. Gen. Stat. § 7A-27(b)(3)(b). Finally, the trial court's order calls into question the General Assembly's ability to enact valid legislation. As the main purpose of the General Assembly is to make laws, the trial court's order, holding that the General Assembly could not pass the challenged session laws, affects a substantial right of the legislative branch. *See* N.C. Gen. Stat. § 7A-27(b)(3)(a).

STATEMENT OF THE FACTS

Challenges to legislative redistricting underlie the trial court's order, but this is not a redistricting case. Moreover, answering the questions presented as set forth above hinges on legal analysis rather than resolving factual incongruencies. Nonetheless, because the trial court focused on the ills it perceived from redistricting, it is important to review the uncontested facts regarding the redistricting that underlie the trial court's analysis.

Challenges to electoral districts initiated in state court

Following the 2010 census, in July 2011, the North Carolina General Assembly enacted new redistricting plans for the North Carolina House of Representatives, the North Carolina Senate, and the United States Congress. *Dickson v. Rucho*, 367 N.C. 542, 545, 766 S.E.2d 238, 242 (2014), cert. granted, judgment vacated, 135 S. Ct. 1843, 191 L. Ed. 2d 719 (U.S. 2015) ("*Dickson I*"). On 3 November 2011, Margaret Dickson and 45 other registered voters filed a complaint seeking to have three redistricting plans declared invalid on the grounds that they constituted racial gerrymanders in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution. *Id. at* 547, 766 S.E.2d at 243. On 4 November 2011, the NAACP, joined by three organizations and 46 individuals, filed a complaint seeking similar relief, and the cases were consolidated. *Id.*

The Superior Court dismissed all of the plaintiffs' claims, a decision that was affirmed by the North Carolina Supreme Court. *See Dickson I*, *supra.* On 20 April 2015, the United States Supreme Court vacated the judgment in *Dickson I* and remanded that case to the North Carolina Supreme Court for further consideration in light of the decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015). *Dickson v. Rucho*, 368 N.C. 481, 485, 781 S.E.2d 404, 410 (2015) ("*Dickson II*"). On 19 December 2015, the North Carolina Supreme Court issued its second decision in the *Dickson* litigation, affirming the decision by the Superior Court to dismiss all of the state and federal claims alleged. *See Dickson II, supra.* On 30 May 2017, the United States Supreme Court vacated the North Carolina Supreme Court's judgment in *Dickson II* and remanded the case for further consideration in light of the United States Supreme Court's decision in *Harris* (as discussed below). *See Dickson v. Rucho,* 137 S. Ct. 2186 (mem.) (2017).

Challenges to electoral districts initiated in federal court

Harris Case

In October 2013, before the North Carolina Supreme Court issued its ruling in *Dickson I*, a lawsuit challenging Congressional Districts 1 and 12 as racial gerrymanders was filed in federal court. *Harris v. McCrory*, 159 F. Supp. 3d 600, 609 (M.D.N.C. 2016), *aff'd Cooper v. Harris*, 137 S. Ct. 1455 (2017). On 5 February 2016, the federal district court issued its decision in *Harris*, finding

that the 2011 versions of Congressional Districts 1 and 12 were racial gerrymanders and enjoining their future use. *See id*. at 604.

Subsequently, on 19 February 2016, the General Assembly enacted a new 2016 Congressional Plan. *See* N.C. Sess. Law 2016-1. The 2016 general election was conducted under the 2016 Congressional Plan.

On 22 May 2017, the United States Supreme Court affirmed the decision of the *Harris* district court. *Cooper v. Harris*, 137 S.Ct. 1455 (2017).

Covington Case

In May 2015, another group of plaintiffs filed a second federal lawsuit challenging nine North Carolina Senate districts and 19 North Carolina House of Representatives districts of the 2011 plan as racial gerrymanders. *Covington v. North Carolina*, 316 F.R.D. 117, 128 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017).

On 11 August 2016, the *Covington* federal district court entered an opinion and judgment finding that the challenged legislative districts constituted racial gerrymanders. *See id*. at 124. Due to the timing of the pending elections, the *Covington* district court did not enjoin the use of the 2011 majority black districts for the 2016 election but prohibited the State from using those districts in elections after 2016. *Id*. at 176-77. The federal district court also directed that new plans be drawn by the General Assembly in its "next legislative session." *Id*. at 177-78.

By order entered on 29 November 2016, the federal district court ordered that a special election be held in 2017 for the purpose of electing new legislators in the redrawn districts. *Covington v. North Carolina*, No. 1:15-CV-399, 2016 WL 7667298, at *3 (M.D.N.C. Nov. 29, 2016), vacated and remanded, 137 S. Ct. 1624, 198 L. Ed. 2d 110 (2017).

On 5 June 2017, the United States Supreme Court affirmed the decision of the *Covington* district court, *see North Carolina v. Covington*, 137 S. Ct. 2211 (2017), but also vacated the district court's order requiring a special election due to the district court's failure to undertake an equitable weighing process to select a fitting remedy for the violations identified, *see North Carolina v. Covington*, 137 S. Ct. 1624, 1626 (2017).

On 31 July 2017, the district court ordered that the General Assembly enact remedial legislative maps no later than 1 September 2017. *See Covington v. State*, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017)). On 31 August 2017, the General Assembly enacted new legislative plans repealing all of the majority black legislative districts challenged in *Dickson*. *See* N.C. Sess. Law 2017-207; 2017-208.

On 19 September 2017, on remand of the question regarding special elections, the district court denied the plaintiffs' request for a special election. *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017).

> We recognize that legislatures elected under the unconstitutional districting plans have governed the people of North Carolina for more than four years and will continue to do so for more than two years after this Court held that the districting plans amount to unconstitutional racial gerrymanders. But at this juncture, with only a few months before the start of the next election cycle, we are left with little choice but to conclude that a special election would not be in the interest of Plaintiffs nor the people of North Carolina.

Id. (emphasis in original); *see also id*. at 902.

Returning to the analysis of the newly proposed districts, the *Covington* court found additional issues with the General Assembly's proposed plan for legislative districts. After use of a Special Master and further appeal to the United States Supreme Court, legislative districts were set for the 2018 election.[2]

Throughout all the redistricting challenges, the General Assembly was never enjoined from making and passing laws. Other than appropriately requiring the General Assembly to propose alternative redistricting plans for the various courts' consideration, no court required or prohibited the General Assembly from taking any action. Therefore, the North Carolina General

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[2] The district court approved the Special Master's plan to redraw nine districts. *Covington v. North Carolina*, 283 F. Supp. 3d 410, 414 (M.D.N.C.). While the Supreme Court affirmed the redrawing of four districts, it rejected the redrawing of districts in Wake and Mecklenburg Counties that had not been based on racial gerrymandering. *North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018).

Assembly continued to serve, passed 214 laws in 2017, and passed 136 laws in 2018, including the challenged Session Laws.

Session Law 2018-119[3]

House Bill 1092, entitled "An Act to amend the North Carolina Constitution to provide that the maximum tax rate on incomes cannot exceed seven percent," was adopted by more than three-fifths of both houses of the North Carolina General Assembly. It was ratified as Session Law 2018-119 on 28 June 2018. Session Law 2018-119 set forth a proposed constitutional amendment specifying that "[t]he rate of tax on incomes shall not in any case exceed seven percent." The Constitution previously provided that "[t]he rate of tax on incomes shall not in any case exceed ten percent." The proposed amendment was ratified by the voters of North Carolina with 57.35% of voters voting in favor of the amendment, and 42.65% voting against. *See* https://bit.ly/2Oz6iUI.

[3] In its Second Amended Complaint filed on 19 September 2018, Plaintiff challenged Session Laws 2018-119, 2018-128, 2018-132 (establishing a commission to assist with the filling of judicial vacancies) and 2018-133 (proposing a bipartisan board of ethics and elections enforcement). At the 2018 general election, voters rejected the proposed amendments set forth in Session Laws 2018-132 and 2018-133, and, by motion filed on 28 December 2018, Plaintiff has dismissed its claims related to Session Laws 2018-132 and 2018-133 as moot.

Session Law 2018-128

House Bill 1092, entitled "An act to amend the North Carolina Constitution to require photo identification to vote in person," was ratified as Session Law 2018-128 on 29 June 2018. Session Law 2018-128 set forth a proposed constitutional amendment that adds to Article VI (suffrage and eligibility to office) a requirement for photo identification for voting in person:

> Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

2018 N.C. Session Law 128, § 1. The new language appears in Article VI, Sections 2 (Qualifications of voter) and 3 (Registration). The proposed amendment was ratified by the voters of North Carolina with 55.49% of voters voting in favor of the amendment, and 44.51% voting against. *See* https://bit.ly/2Oz6iUI.

ARGUMENT

The trial court became the first known court in the country to void amendments passed by a majority of voters on the theory that state legislators were usurpers and lacked the ability to propose amendments to the people for a popular vote. The court looked primarily to the federal decision in *Covington* for support, apparently swayed by the *Covington* court's discussion about the extent to which racial gerrymandering occurred. The trial court apparently

ignored, however, the *Covington* court's explicit determination that, under the circumstances, whether the Legislature could act was a matter of state law. Although concluding that the Legislature could *not* act, the trial court neither cited nor discussed State law in support of such a conclusion. The North Carolina Supreme Court has, in fact, evaluated the theory that redistricting or apportionment violations lead to invalid laws and, like all other courts that have reviewed the issue, has rejected that theory.

The trial court does cite *Dawson v. Bomar*, 322 F.2d 445, 446 (6th Cir. 1963), for the proposition that striking down two constitutional amendments will not lead to chaos and confusion about, for example, what other laws could be called into question. However, *Dawson* does not provide the support sought by Plaintiff or the trial court but, rather, emphasizes that it is inappropriate to substitute the court's wisdom for that of the legislature. For the trial court to encroach on the legislative branch in this way is, in and of itself, a violation of the separation of powers.

This Court should vacate the trial court's judgment and enter a dismissal in favor of Defendants, or, alternatively, reverse and enter judgment in favor of Defendants.

I. The trial court erred in rejecting the bar of the political question doctrine and instead determining that the General Assembly lacked sufficient sovereign authority to propose a constitutional amendment.

The trial court held that the North Carolina General Assembly lacked authority to pass legitimate legislation and, specifically, Session Laws 2018-119 and 2018-128 proposing constitutional amendments, until representatives elected under redrawn legislative maps took office in 2019.[4] Such a collateral attack on particular laws has been previously rejected by our Supreme Court in large part because it determined such a challenge to be a political question. *See Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316 (1939).

> The political question doctrine controls, essentially, when a question becomes not justiciable because of the separation of powers provided by the Constitution. The doctrine excludes from judicial review those controversies which revolve around the policy choices and value determinations constitutionally committed

[4] The trial court described the 2018 election as "the first to be held under the remedial maps approved by the federal courts to correct the 2011 unconstitutional racial gerrymander." (R p 186). However, the NAACP and other plaintiffs continue to challenge North Carolina's legislative districts for mid-decade redistricting and as political gerrymanders that favor Republican candidates. *See, e.g., NAACP v. Lewis*, Wake County Superior Court Case No. 18 CVS 2322 (three-judge panel found that redrawing of four Wake County districts was not necessary to comply with federal law and violated the State Constitution's prohibition on mid-decade redistricting); *Common Cause v. Rucho*, 318 F. Supp. 3d 777 (M.D.N.C. 2018) (holding that redistricting plan constituted partisan gerrymandering); *Common Cause v. Lewis*, Wake County Superior Court Case No. 18 CVS 14001 (suit filed in November 2018 alleging that maps drawn in 2017 violate the North Carolina Constitution due to partisan gerrymandering).

> for resolution to the legislative or executive branches of government.

Cooper v. Berger, 370 N.C. 392, 407-08, 809 S.E.2d 98, 107 (2018) (denying political question, and accepting jurisdiction, where unlike *Bacon v. Lee*, 353 N.C. 696, 549 S.E.2d 840 (2001), the case involves a conflict between two competing constitutional provisions) (citations and quotations omitted).

In *Leonard*, 216 N.C. at 89, 3 S.E.2d at 319, our Supreme Court heard challenges to the constitutionality of a sales tax provision. While arguing that the provision created arbitrary exemptions, the plaintiff also argued that the law was unconstitutional because "the General Assembly of 1937 was not properly constituted . . . and that none of the legislation attempted at this session can be regarded as possessing the sanctity of law." *Id*. at 324. The Court rejected that theory, noting that the great weight of precedent was against such a determination regarding the validity of laws like that espoused by Plaintiff. Particularly, though, our Supreme Court noted that the question in North Carolina was a political one, and one that was non-justiciable. *Id*. The *Leonard* court did not hold that a constitutional challenge to redistricting or apportionment itself was a political question, as the plaintiff in *Leonard* was not asking the Court to mandate or enforce redistricting or reapportionment. Rather, the plaintiff was using the Legislature's failure to apportion itself properly as a basis for attacking a law passed by the Legislature.

Similar to the plaintiff in *Leonard*, Plaintiff used what it contends to be the absence of a legitimately drawn legislature to attack Session Laws 2018-119 and 2018-128 as passed by that elected body. Just like in *Leonard*, wherein the plaintiffs were collaterally attacking a tax law, Plaintiffs here are using an argument regarding the illegitimacy of the General Assembly to attack two proposed constitutional amendments ratified by the 2017-2018 General Assembly. Our Supreme Court has said such an attack is non-justiciable. *Id.* at 324.

In so holding that such an argument is a political question and, therefore, non-justiciable, the North Carolina Supreme Court cites an Illinois Supreme Court opinion holding the same thing—that there is no authority of the court to issue such a ruling:

> There is no indication in any of the provisions of the Constitution . . . that members of a subsequent General Assembly should not be permitted to hold office as such because of the fact that a preceding General Assembly had refused to apportion the state. In other words, we hold that we are not authorized by the Constitution of Illinois to declare that the General Assembly that passed the Deadly Weaspon [sic] Act of 1925 was not a de jure legislative body and the members thereof de jure members and officers of that General Assembly. The Act of 1925 is therefore not unconstitutional on the grounds contended for in this case.

People v. Clardy, 334 Ill. 160, 167, 165 N.E. 638, 640–41 (1929).

The Supreme Court of Hawaii (prior to statehood) held similarly. *See Territory v. Tam*, 36 Haw. 32 (1942). There, a plaintiff challenged a "hit-and-run" statute partially on the basis that the statute was passed by an illegitimate legislative body. *Id*. at 33. "Those courts that have considered the subject have uniformly held that an Act of the legislature is not invalid, even though the legislature had failed to effect reapportionment pursuant to constitutional mandate." *Id*. at 34-35. The Hawaii court, like the *Leonard* court, noted that the plaintiff's challenge was not to the means of passage of the act itself but, rather, to the makeup of the legislative body that passed the act. *Id*. at 35-36. That type of inquiry, the Court held, was a political question. *Id*.

As the United States Supreme Court recognized in *Baker v. Carr,* 369 U.S. 186, 217 (1962), any one of the following conditions may give rise to a non-justiciable political question:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. (emphasis added).

Here, Plaintiff argues that only Session Laws 2018-119 and 2018-128 are void, but the core principle of its argument—that the General Assembly lacked popular sovereignty due to redistricting—is an attack on any law that the General Assembly has passed. Plaintiff provides no manageable standards to guide the Court in determining what laws are void and what laws are valid. *See, e.g., Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 639, 599 S.E.2d 365, 391 (2004) ("In our view, not only are the applicable statutory and constitutional provisions persuasive in and of themselves, but the evidence in this case demonstrates that the trial court was without satisfactory or manageable judicial criteria that could justify mandating changes with regard to the proper age for school children."). In fact, the plaintiffs in *Covington* and Plaintiff's counsel previously argued that *any* legislative action by the General Assembly could be void. (*See* Plaintiffs' Supplemental Brief on Remedies, *Covington*, 1:15-CV-00399-TDS-JEP, Docket 173, p. 6-7 (filed 21 July 2017) (Attached hereto)) (T pp 32-33). The Plaintiffs in *Covington* argued that:

> upon the issuance of [the Supreme Court's] mandate the members of the illegally constituted General Assembly lost the protection of the *de facto* doctrine and became usurpers unauthorized to act to protect the health and safety of all North Carolinians. It is entirely possible that any legislative actions they take without being elected from legal districts could be subject to challenge under state law.

(*Id.*) Derb Carter, counsel with the Southern Environmental Law Center, swore in a declaration filed in *Covington* that "[i]t is the position of SELC that upon the issuance of the mandate in *Covington*, the legislature as a whole assumed usurper status, rendering future actions void *ab initio*." (*See id.*, Docket 173-2, p. 3 (filed 21 July 2017) (Attached hereto)) (T pp 32-33). In a letter sent to Defendants and attached to his declaration, Mr. Carter focused on the override of a gubernatorial veto, arguing that "[b]ecause the General Assembly is now a usurper legislature and their enactments have no binding effect, [the Southern Environmental Law Center] believes that the General Assembly is without authority to override Governor Cooper's veto . . . ." (*Id.*) Plaintiff attempts to backtrack here by limiting its challenge to the proposal of constitutional amendments (*see, e.g.,* R p 154), but the trial court gave no manageable standard to support that distinction.

The trial court noted that "the requirements for amending the state Constitution are unique and distinct from the requirements to enact other legislation." (R p 191). The North Carolina Constitution does set forth a special procedure for constitutional amendments; the General Assembly initiates an amendment with a three-fifths vote to submit a proposed amendment to the voters of North Carolina for ratification or rejection, and the

proposal becomes an amendment only if passed by a majority of voters.[5] *See* N.C. Const. Article XIII, Section 4. While this process is specific to constitutional amendments, a three-fifths vote of the General Assembly is required in other settings (e.g., the override of a gubernatorial veto) as well. *See* N.C. Const. Article II, Section 22(1). Despite the requirement of a legislative supermajority in other settings, the trial court concludes that the constitutional amendment process is distinct from the process for passing other laws and that the "General Assembly has the authority to submit proposed amendments to the Constitution only insofar as it has been bestowed with popular sovereignty." (R p 191). However, the constitutional amendment process (at least as far as the vote of the General Assembly is required) is not entirely unique from the regular law-making process.

In addition to laws that were passed over the governor's veto (including the State budget), two other constitutional amendments were proposed by this General Assembly *and passed by the people* but are not challenged here.[6] To

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[5] Here, Plaintiff does not challenge the popular vote aspect of the constitutional amendment process and does not dispute that North Carolina voters adopted the voter ID amendment proposed in Session Law 2018-128 and the amendment to the tax cap proposed in Session Law 2018-119 while rejecting other proposed amendments.

[6] The same General Assembly Plaintiff attacks here passed Session Law 2018-96 (setting forth a proposed amendment related to the right to hunt and fish) and 2018-110 (setting forth a proposed amendment related to victims' rights). Both of these proposed amendments were ratified by voters. *See* https://bit.ly/2Oz6iUI.

parse what laws are void and what laws are valid becomes a difficult task, which is why the Court in *Leonard* characterized Plaintiff's argument about the illegitimacy of the legislature as "[q]uite a devastating argument, if sound." *Leonard*, 216 N.C. at 89 3 S.E.2d at 324.

Determining which laws would be valid and which would not be valid would call upon the courts to weigh the policy implications or importance of each act subject to collateral attack under Plaintiff's theory. These policy determinations are not for the courts. *See Bank of Union v. Redwine*, 171 N.C. 559, 570, 88 S.E. 878, 883 (1916) ("The propriety and wisdom of female suffrage and of the eligibility of women to hold office are political questions, which must be settled by the people, and which we cannot discuss or consider in the determination of legal questions. We simply declare the law as we find it, without usurping the power to change the Constitution—a power which the people have reserved to themselves."). For instance, in *Pac. States Tel. & Tel. Co. v. State of Oregon*, 223 U.S. 118 (1912), the United States Supreme Court reviewed a collateral attack on a tax against a telephone company passed by the Oregon State legislature. As part of its argument, the plaintiff argued that the referendum authority for the tax denied it a republican form of government under the United States Constitution. *Id.* at 136. The Court rejected such an argument as a political question, noting in contrast that a *direct* attack about

the due process afforded or equal protection denied by the law itself might not have been a political question.

> Its essentially political nature is at once made manifest by understanding that the assault which the contention here advanced makes is not on the tax as a tax, but on the state as a state. It is addressed to the framework and political character of the government by which the statute levying the tax was passed.

Id. at 150. That attack made in Plaintiff's Motion for Partial Summary Judgment is the same; it is not directed at either of Session Law 2018-119 or Session Law 2018-128 *per se* but, rather, at the Legislature's ability to pass anything (particularly anything that would require a three-fifths majority) under the circumstances post-*Covington*.

Questioning the validity of laws passed by the General Assembly through such a collateral attack on the institution has also been held to be a political question because it would demonstrate a lack of respect for the coordinate branch of government. In *Birmingham-Jefferson Civic Ctr. Auth. v. City of Birmingham*, 912 So. 2d 204 (Ala. 2005), the Alabama Supreme Court determined it could not decide whether the "majority" required to pass a law in Alabama meant the majority of those legislators present or a majority of all legislators. Among other reasons, the court noted, "[i]f the judiciary questions the legislature's declaration that Act No. 288 and Act No. 357 were validly

enacted by the legislature, we would be demonstrating a lack of the respect due that coordinate branch of government." *Id.* at 219.[7]

The trial court also erred in failing to recognize that the qualifications of the members of the General Assembly are textually given to the two houses of the Legislature, which makes them political questions before the state court. Plaintiff's usurper argument, as highlighted in *Pacific States Telephone*, *supra*, is not a direct attack on the law, like a facial or as-applied challenge to the constitutionality of the Session Laws; rather, it collaterally attacks the qualifications of the members of the General Assembly to serve, as noted in

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[7] The North Carolina Supreme Court, in *Reade v. City of Durham*, 173 N.C. 668, ___, 92 S.E. 712, 715 (1917), noted that the "power given to the General Assembly to submit amendments to the people is a general and unrestricted one, in the sense that they may, without any limitation, prescribe the method by which this shall be done; in other words, the procedure throughout, and from beginning to end."

Here, the trial court appropriately found that the session laws in question passed each house by a three-fifths vote and were proposed to and passed by the people. The issue, as the trial court held, was that "the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state Constitution before an amendment proposal can be submitted to the people for a vote, breaking the requisite chain of popular sovereignty between North Carolina citizens and their representatives." (R p 191). But the trial court failed to establish under the State Constitution the power or method by which the State courts could look beyond the amendment process laid out in our Constitution and followed by the General Assembly to determine that the General Assembly's vote itself was flawed. The trial court merely cited the *Covington* opinion, (*see* R p 192), as sufficient grounds to vest the trial court with the ability to strike down session laws of the General Assembly on a collateral attack and to define the scope and reach of that ability (i.e., limiting the decision to two constitutional amendments).

Leonard and *Tam*, *supra*. Article II, Section 20 of our Constitution provides that "[e]ach house shall be judge of the qualifications and elections of its own members[.]" In *Alexander v. Pharr*, 179 N.C. 699, 103 S.E. 8 (1920), the North Carolina Supreme Court, in a swift *per curiam* opinion, followed that text of the Constitution and held that a challenge to "determine the right of the defendant to hold said office" in the North Carolina House of Representatives was a challenge beyond the jurisdiction of the state courts. Plaintiff's argument rests on the principle that the individually elected representatives and senators lacked the ability (i.e., popular sovereignty) to represent their constituents. Plaintiff essentially argues that the legislators elected from the districts affected by what was found to be unconstitutional gerrymandering did not qualify as members of the General Assembly. Plaintiff does not seek the remedy typically granted (and already granted in *Covington*) in redistricting cases but rather asks this court for the additional remedy of holding validly passed laws void because the districts of the legislators who passed those laws are unconstitutional.

For the several reasons set forth above, Plaintiff's argument presents a political question. And, because our Supreme Court has held a collateral attack like that brought by Plaintiff on the legitimacy of the General Assembly is a political question, this Court should vacate the trial court's order and dismiss Plaintiff's claims for lack of subject matter jurisdiction.

II. By determining that the General Assembly was a body of usurpers incapable of passing laws, the trial court erred in voiding the Constitutional Amendments.

Plaintiff argues, and the trial court held, that the General Assembly is a "usurper body" that lacked authority to propose constitutional amendments. This is an extreme overreach. In fact, the United States Supreme Court and other authorities have held to the contrary. The trial court's determination sits on a jurisprudential island; the parties have found no case finding a legislature cannot act due to a redistricting violation.

As recognized by the United States Supreme Court, "a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act." *Baker v. Carr*, 369 U.S. 186 250 n. 5 (1962). Moreover, "legislative acts performed by legislators held to have been elected in accordance with an unconstitutional apportionment" are "not therefore void." *Ryder v. United States*, 15 U.S. 177, 183 (1995) (acknowledging prior holding in *Connor v. Williams*, 404 U.S. 549, 550-51 (1972)); *Buckley v. Valeo*, 424 U.S. 1, 142 (holding legislative acts performed by legislators elected in accordance with unconstitutional appointment plan are given de-facto validity). Other federal courts have reached similar conclusions. *See, e.g., Martin v. Henderson*, 289 F. Supp. 411, 414 (E.D. Tenn. 1967) (holding malapportioned legislature is nonetheless still empowered to act). In *Everglades Drainage League v. Napoleon B. Broward Drainage Dist.*, 253 F.

246, 252 (S.D. Fla. 1918), it was argued that the refusal of the legislature to reapportion following the census as required by the state constitution "makes void the taxes levied pursuant to laws passed by a Legislature elected subsequent to such refusal." The court found no support for voiding the law:

> If this contention is correct, it would upset all the laws passed subsequent to 1897. The statement of the effect of the court undertaking to declare invalid a law passed by a Legislature regularly organized and recognized as the existing legislative body by the executive of the state, because a census had been taken, but no apportionment of representation made, seems to me sufficient to condemn the contention of the bill. But the Legislature passing chapter 7430 was the Legislature *de facto*, and its acts are therefore binding. This I understand from the authorities to be the law, and no authority contra has been cited to me.

Id.

Defendants anticipate that Plaintiff will argue (as it has in the past) that reliance on federal cases is misplaced in light of the statement in *Covington* that the usurper argument is a matter of state law. Such an argument is feigned criticism where the trial court relied on and referred to only federal decisions in the 22 February Order adjudicating this "matter of state law." (R pp 191-92). Moreover, the federal courts are not alone in rejecting the trial court's holding here. In *Scholle v. Secretary of State*, 116 N.W.2d 350, 352-53 (1962), the Michigan Supreme Court faced a similar argument about the validity of the Michigan legislature in a redistricting case remanded by the

United States Supreme Court after *Baker v. Carr, supra.* The Michigan court held that the legislative officers would not continue to serve beyond the next scheduled election and, in fact, prohibited primaries from taking place under the districts as drawn, *see id.* at 356. Nevertheless, the court validated prior laws and any law that would be passed by the legislature through the end of the term. *Id*. The court found the legislature to be a *de facto* legislature. *Id*. at 356-57.

Notably, the federal cases cited by the trial court actually cut against Plaintiff's argument. Even though the *Covington* court noted that "the districting plans interfered with the very mechanism by which the people confer their sovereignty on the General Assembly and hold the General Assembly accountable," *Covington*, 270 F. Supp. 3d at 897, that federal district court did not order a special election, *see id*. at 901 ("In sum, at this late date, this Court cannot order a special election without materially disrupting the districting and electoral process in a manner that would harm all North Carolinians, including Plaintiffs."). The *Covington* court declined to order a special election even in the face of the very usurper argument being raised herein as grounds to act:

> We agree with Plaintiffs that the absence of a legislature legally empowered to act would pose a grave disruption to the ordinary processes of state government. But Plaintiffs cite no authority from state courts definitively holding that a legislator

> elected in an unconstitutionally drawn district is a usurper, nor have we found any.

Id. at 901. Thus, the *Covington* court found the usurper argument (a) implicitly unconvincing enough not to necessitate an immediate special election as a remedy for the redistricting violation and (b) explicitly a matter of *state law*. Indeed, the *Covington* court acknowledged at the beginning of its opinion that because of its determination, the Legislature, as elected, would continue to govern until the end of the term. *See id.* at 884.

To find that a legislator elected in an unconstitutionally drawn district is a usurper, the trial court relied on the rhetoric of the *Covington* court instead of its determination that the timing of a special election was too disruptive to the function of State government. The trial court's decision did not rest on an examination of state law; there is no state law cited in the trial court's twelve-page opinion. That is not surprising because, as the district court in *Covington* noted, no state law (in North Carolina or otherwise) has been found to support the decision.

Redistricting challenges to state legislative districts have a lengthy history; in North Carolina alone the challenges go back over thirty years. *See Thornburg v. Gingles*, 478 U.S. 30 (1986) (holding that 4 out of 5 legislative districts challenged under the 1982 redistricting plan were unconstitutional). Indeed, legislative districts in North Carolina have been repeatedly challenged

for decades. *See id.; Stephenson v. Bartlett* (*Stephenson I*), 355 N.C.354, 562 S.E.2d 377, 383–84 (2002) (holding that a 2001 redistricting plan was unconstitutional under our state Constitution); *Stephenson v. Bartlett* (*Stephenson II*), 357 N.C.301, 582 S.E.2d 247 (2003) (holding that a revised 2002 redistricting plan was also unconstitutional); *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007) (holding that a 2003 redistricting plan was unconstitutional based on House District 18, but not requiring redistricting until after the 2008 election); *Bartlett v. Strickland*, 556 U.S. 1 (2009) (affirming North Carolina Supreme Court determination that House District 18 in the redistricting plan violated the constitution). And during those years of fighting over the districts and redrawing them, not only was the General Assembly never enjoined from passing legislation, but it also proposed Constitutional Amendments that were ratified by the people. *See, e.g.,* 1985 N.C. Sess. Law 920 (proposing extending midterm elections for vacancy appointments more than 60 days before the next election rather than 30); 1985 N.C. Sess. Law 933 (proposing to permit the state to develop and finance new and existing seaports and airports). Despite a history of redistricting challenges, no challenge has ever been brought to the General Assembly's ability to propose constitutional amendments, and not once has a court determined that unconstitutional redistricting yields an ineffective state legislature.

While voiding the two amendments at issue assuredly pleases Plaintiff, citizens of the State at large are harmed by the confusion created by the trial court's holding, which calls into question whether other laws are valid or invalid and whether there was (or is) a functioning Legislature. Such confusion was discussed in *Dawson v. Bomar*, 322 F.2d 445 (6th Cir. 1963), in which a state prisoner filed a petition for habeas corpus against the Warden of the Tennessee State Penitentiary. *Id.* at 446. The plaintiff asserted that the failure of the Tennessee legislature to reapportion itself in 1901 violated the Constitution of Tennessee and the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Id.* As a result, the plaintiff argued that the capital punishment laws enacted by the allegedly unconstitutionally apportioned legislature were void. *Id.* The *Dawson* court held that the Tennessee legislature was malapportioned in violation of the United States Constitution. *Id.* at 447.

The *Dawson* court discussed the concepts of *de jure* existence, *de facto* existence,[8] and an overarching concern for avoiding chaos and confusion:

> It is further generally held that irrespective of the *de jure* or *de facto* doctrines, the Courts will refrain from declaring legislative acts unconstitutional, even though the legislature may itself have been

[8] According to *Black's Law Dictionary*, the phrase "*de facto*" "is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes but is illegal or illegitimate," while "*de jure*" means legitimate or lawful.

> adjudicated to have been unconstitutionally constituted by reason of malapportionment, where the result would be to create chaos and confusion in government. In such a situation it is generally held that in weighing the consequences of setting aside all legislation and the harm thus caused the public against the harm caused the party complaining of his rights having been violated by the refusal of the legislature to properly apportion itself, the equities favor sustaining the validity of all legislation.

Id. at 447. In *Dawson*, the plaintiff attempted to draw a distinction between routine laws of a legislature, which if set aside might lead to chaos and confusion, and the challenged law related to capital punishment, which the plaintiff argued would not create the same issues if abrogated due to the gravity and finality of the subject matter. *Id*. at 447-48.

Like the plaintiff in *Dawson,* Plaintiff and the trial court attempt to draw a line of demarcation between the constitutional amendments at issue and other laws. The trial court concluded that "[i]t will not cause chaos and confusion to declare that Session Laws 2018-119 and 2018-128 and their corresponding amendments to the constitution are void *ab initio*." (R p 192). In support of this conclusion, the trial court seems to rely on the uniqueness of the constitutional amendment process. As noted *supra*, however, the three-fifths majority vote of the Legislature required for a proposed amendment is not truly unique. What is unique about the constitutional amendment process is ratification of the proposed amendment directly by the people in a statewide

vote. At the 2018 general election, over two million North Carolina voters ratified each of the challenged amendments, while voters also rejected two proposed amendments. But the trial court did not rely on the unique requirement of ratification by the people to save Session Laws 2018-119 and 2018-128 or to separate them from other acts of the General Assembly. Rather, the trial court, in drawing its line between proposed constitutional amendments and other laws passed by the Legislature, has done nothing more than substitute its will for that of the Legislature and, more importantly, that of more than two million voters.

The Sixth Circuit in *Dawson* rejected the argument that a court could draw such a distinction between the various laws passed by a legislature.

> For the Court to select any particular category of laws and separate them from other laws for the purpose of applying either the *de facto* doctrine or the doctrine of avoidance of chaos and confusion would in fact circumvent legal principles in order to substitute the Court's opinion as to the wisdom, morality, or appropriateness of such laws. . . . The purpose of both the *de facto* doctrine and the doctrine of avoidance of chaos and confusion would be defeated if the judiciary could be called upon to adjudicate respective equities between the public and the complaining party as to any specific act. Both doctrines must have overall application validating the otherwise valid acts of a malapportioned legislature, with a judicial severance of specific acts and a weighing of equities as to those specific acts precluded, if a government of laws and not of men is to remain the polar star of judicial action.

Id. at 448. By striking down Session Laws 2018-119 and 2018-128 and the resulting constitutional amendments, the trial court in this matter violated that "polar star of judicial action," and Plaintiff asks this Court to do the same: make a determination as to which laws are valid and which are not. Such an exercise would violate the doctrines expressed by the *Dawson* court, which exist for the purpose of protecting the validity of laws.

To date, no court (other than the trial court) has held that voiding laws passed by an unconstitutionally districted legislature is an appropriate remedy for a violation of Plaintiff's equal protection rights. The *Covington* court, interpreting the United States Constitution, fashioned the remedy for the constitutional violation (redrawing districts), and that remedy did not include setting aside otherwise validly passed laws.[9] There is nothing to suggest that our State Constitution requires a more invasive and disruptive remedy than does the federal Constitution.

In an attempt to marshal support under North Carolina jurisprudence for voiding laws of the General Assembly, Plaintiff has cited to several nineteenth century North Carolina cases. However, these cases are easily distinguished because they do not involve the full Legislature and because they fall outside of the redistricting context. Instead, these cases merely discuss

[9] The trial court acknowledged this remedy, noting that curing the redistricting violation required districts to be redrawn. (R p 191).

criteria for determining when an officer has *de facto* status. *See Keeler v. City of New Bern*, 61 N.C. 505, 507 (1868) (holding that New Bern councilmen who were never actually elected to office were usurpers and unable to bind the town in contract); *see Van Amringe v. Taylor*, 108 N.C. 196, 12 S.E. 1005, (1891) (when clerk of the registrar of an election precinct fraudulently obtains possession of books under a promise to return them, which he refuses to do, and assumes to act as registrar, he is not a *de facto* officer; election held by him as registrar and his appointees as judges is void).

Plaintiff has previously relied on *Van Amringe* for the proposition that, "where an elected body or officer has obtained office through illegitimate means, the body lacks *de jure* authority to engage in official acts, unless it does so under a presumption by the public that its acts are valid, thus affording that body *de facto* lawful authority." Plaintiff argues that the General Assembly ceased to have either *de jure* or *de facto* authority following the Supreme Court's decision in *Covington* in June 2017.

Plaintiff's premise that the General Assembly became a usurper legislature upon the mandate of the United States Supreme Court fails for two reasons. First, the use of the 2011 districts for the 2016 election was analyzed and ultimately permitted by the federal district court despite having been found unconstitutional. *See Covington v. North Carolina*, 316 F.R.D. 117, 177 (M.D.N.C. 2016), aff'd, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (U.S. 2017). The

federal courts also ultimately declined the request by the *Covington* plaintiffs to order special elections for the North Carolina General Assembly in 2017. *See Covington v. North Carolina*, 270 F. Supp. 3d at 902. Thus, the public could easily presume that the acts of the General Assembly were indeed valid, giving the General Assembly at least *de facto* authority to act. Second, as recognized by the *Covington* court, no precedent has been cited that a legislator elected from an unconstitutional district is in fact a usurper. Both Plaintiff and the trial court take a jurisprudential leap in determining that legislators elected under such district lines are, in fact, usurpers. But the final arbiter of the unconstitutionality of the 2011 plans—the United States Supreme Court—has held in the same context that "a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act." *Baker v. Carr*, 369 U.S. 186, 250 n. 5 (1962) (Douglas, J., concurring). The trial court was the first court, *under state law*, to hold that redistricting violations create a usurper legislature. Prior to the 22 February 2019 Order, the public, including Plaintiff, operated under the correct presumption that the *de facto* General Assembly could act to propose

constitutional amendments or pass other laws.[10] The trial court erred in determining otherwise.

CONCLUSION

Plaintiff and the trial court occupy a unique spot in redistricting jurisprudence by concluding that, upon a determination that districts were unconstitutional under the United States Constitution, the North Carolina General Assembly became a usurper legislature that could not propose constitutional amendments. Our Supreme Court has held that state courts cannot review an indirect challenge to the authority of the legislators to enact laws such as that advanced by Plaintiff. Accordingly, this Court should vacate the trial court's opinion granting Plaintiff's motion for partial summary judgment and reverse the trial court's denial of Defendants' motions to dismiss. Alternatively, even if this Court holds that there is subject matter jurisdiction, this Court should vacate and reverse the trial court's summary judgment position as a matter of North Carolina law. Under N.C. Gen. Stat. § 1A-1, Rule 56(c), where there was no genuine issue of material fact, the trial court erred in failing to grant summary judgment in favor of the non-moving party.

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[10] It is doubtful that had a constitutional amendment for an independent redistricting commission been proposed by the General Assembly in the 2018 session that Plaintiff would argue it is unconstitutionally void.

Respectfully submitted this 4th day of June, 2019.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Defendant-Appellants certifies that the foregoing brief, which is prepared using a proportional font, is no more than 8,750 words (excluding covers, captions, indexes, table of authorities, certificates of service, this certificate of compliance, counsels' signature block, and appendices), including footnotes and citations, as reported by the word-processing software.

/s/ D. Martin Warf
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant-Appellants' Brief was served upon the persons indicated below via electronic mail and United States Mail, postage prepaid, addressed as follows:

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No. COA19-384 TENTH JUDICIAL DISTRICT

****
NORTH CAROLINA COURT OF APPEALS
****

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Plaintiff, vs. TIM MOORE, in his official capacity, and PHILIP BERGER, in his official capacity, Defendants.	From Wake County 18-CVS-9806

****
APPENDIX TO DEFENDANT-APPELLANTS' BRIEF
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- App. 1 -

11/06/2018 OFFICIAL GENERAL ELECTION RESULTS - STATEWIDE

Criteria

Election: 11/06/2018
County: STATE
Office: REFERENDA
Contest: MAXIMUM INCOME TAX RATE OF 7.0%

Display Results | Refresh

Statewide Info

Last County Submit:
November 27, 2018 8:55 am

Last County Upload:
November 27, 2018 8:55 am

Precincts Reported:
100.00% (2,706 out of 2,706)

100.00%

Ballots Cast:
52.98% (3,755,778 out of 7,089,657)

52.98%

MAXIMUM INCOME TAX RATE OF 7.0%
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		2,094,924	57.35%
Against		1,557,707	42.65%

- App. 2 -

- App. 3 -

11/06/2018 OFFICIAL GENERAL ELECTION RESULTS - STATEWIDE

Criteria

Election: 11/06/2018
County: STATE
Office: REFERENDA
Contest: REQUIRE PHOTO ID TO VOTE

Display Results | Refresh

Statewide Info

Last County Submit:
November 27, 2018 8:55 am

Last County Upload:
November 27, 2018 8:55 am

Precincts Reported:
100.00% (2,706 out of 2,706)

100.00%

Ballots Cast:
52.98% (3,755,778 out of 7,089,657)

52.98%

REQUIRE PHOTO ID TO VOTE
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		2,049,121	55.49%
Against		1,643,983	44.51%

- App. 4 -

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:15-cv-00399-TDS-JEP

SANDRA LITTLE COVINGTON, *et al.*, Plaintiffs, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	**PLAINTIFFS' SUPPLEMENTAL BRIEF ON REMEDIES**

I. INTRODUCTION

Plaintiffs' submit that this Court should issue an Order permitting the General Assembly two weeks, that is, until August 11, 2017, to enact remedial districts in the parts of the state affected by the unconstitutional racial gerrymander that occurred in 2011. That should be the deadline for compliance with this Court's order whether or not the additional remedy of a special election is warranted.

Plaintiffs' further submit that a balancing of the relevant equitable considerations present in these circumstances demands that a special election be ordered before the General Assembly reconvenes for its 2018 legislative session on May 16, 2018. Resolution 2017-12, §3.1. Exhibit 1 is an illustrative schedule for further proceedings in this case that demonstrates the feasibility of concluding those elections in March with only slight modifications to state law requirements concerning absentee balloting periods. Notably, this schedule is consistent with the State of North Carolina's position that 1) a special election should occur while the General Assembly is in recess, and 2) no later

than March 2018. Position Stmt. By the State of North Carolina and the State Bd. of Elections 4 (Doc. 162, July 6, 2017).

Primary among the considerations justifying a special election include: 1) the fact that the constitutional violation here is significant, affecting approximately 75% of the state's Senate Districts and 67.5 percent of the House districts. Decl. of Dr. Thomas Hofeller, 5-6, (Doc. 136-1, Oct. 28, 2016); 2) that the irreparable injury experienced by voters assigned to districts based on their race is significant; 3) that a special election conducted while the General Assembly is not in session minimizes the disruption of the governmental functions; 4) that the intrusion on state sovereignty here is measured and required, particularly given that the Defendants to date have failed to comply with this Court's order to redraw the racially gerrymandered districts; 5) that the intrusion on state sovereignty is also minimal since it is the policy of this state, as expressed in the state constitution, that "[f]or redress of grievances and for amending and strengthening the laws, elections shall be often held." N. C. Cont. Art. 1, § 5; and 6) that the legitimacy of further actions by this legislature is called into question under state law until its members are elected from districts that are constitutional.

As the Supreme Court made clear over fifty years ago: "It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired. Legislators have no immunity from the Constitution." *Baker v. Carr*, 369 U.S. 186, 249 (1962). The legislative defendants have delayed as long as possible, the time has come for a remedy in this case.

II. ARGUMENT

A. The North Carolina Supreme Court Decisions in *Stephenson v Bartlett I* and *II* Provide Important Guidance for this Court in Determining the Timing and Scope of a Proper Remedy in this Case.

Decisions made by North Carolina's state courts in 2002 to remedy constitutional defects in legislative redistricting plans enacted by the General Assembly in 2001 are especially instructive as this Court considers the timing and scope of remedies for the constitutional defects in the legislative redistricting plans enacted by the General Assembly in 2011. On April 30, 2002, the North Carolina Supreme Court declared that both the House and Senate redistricting plans enacted by the General Assembly in 2001 were void in their entirety because those plans divided more counties than permitted by the "whole county provisions" of Article II, Sections 3(3) and 5(3) of the state constitution. *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002). To remedy those defects, the Court remanded the case to the trial court with instructions to determine if the General Assembly could promptly redraw the districts and if not, to redraw the districts itself. *Id*. 355 N.C. at 385.

Two weeks later, on May 17, 2002, the General Assembly enacted new plans. On May 20, the trial court declared that those new plans failed to remedy the violations of the state constitution and undertook to draw its own plans. The General Assembly's request to stay that order was denied by the Supreme Court on June 6. On July 12, 2002, the United States Department of Justice precleared the trial court's plans. Primaries were conducted under those plans nine weeks later (on September 9), and 8 weeks later (on

November 5) the 2002 general election was held for all 50 seats in the Senate and all 120 seats in the House. *Stephenson v Bartlett*, 357 NC 301, 303-04 (2003).

In 2002 the North Carolina courts acted promptly to prevent any injury to North Carolinians from being assigned a district improperly formed from pieces of counties. This Court should follow that model in remedying the personal injuries inflicted on North Carolinians over the past six years by Defendants' racially gerrymandered districts.

B. The Legislative Defendants seek more time to Redraw from the Court than the General Assembly has Allowed itself to Redraw.

In their July 6 Position Statement the Legislative Defendants state that "the General Assembly envisions completing the redistricting process no later than November, 15, 2017." Leg. Defs. Position Statement 2 (Doc. 161, July 6, 2017). That proposed leisurely pace demeans the extraordinary harm the Legislative Defendants have inflicted on the Plaintiffs and repudiates the express terms of a statute the General Assembly enacted in 2003. That statute establishes two weeks as the time the General Assembly needs to draw remedial redistricting plans and further provides that that when the General Assembly fails to act within that period the courts should draw an interim plan. N.C. Gen. Stat. § 120-2.4 (2003). Importantly, drawing remedial districts is not the same enterprise as redrawing districts following a new census which requires taking into account the population shifts that occur over a decade.

C. The Failure to Hold Special Elections before the Next Legislative Session Brings into Question the Legitimacy of Any Actions by the Unconstitutionally Elected General Assembly

In weighing the equitable considerations relevant to the question of whether special elections should be held before the North Carolina General Assembly convenes again in its regular "short session" in May 2018, and in considering the individual and collective interests at stake, one consideration must be the extent to which the legitimacy of the actions of an unconstitutionally elected Legislature may be severely undermined. Under state law, officers elected pursuant to an unconstitutional law are "usurpers" and their acts are absolutely void. *In re Pittman,* 151 N.C. App. 112, 115, 564 S.E.2d 899, 901 (2002). While there is a *de facto* officer doctrine which is designed to validate the past acts of public officers illegally in office because otherwise, chaos would ensue. *Ryder v. United States*, 515 U.S. 177, 180 (1995), North Carolina courts have held that once the unconstitutionally of an election is finally determined, the *de facto* doctrine no longer applies and the officers elected at those invalid elections becomes usurpers. *See State v. Lewis*, 107 N.C. 967, 12 S.E. 457, 458 (1890) (the acts of an officer elected pursuant to an unconstitutional law are valid if performed *before* the unconstitutionality of the law has been judicially determined.) *See also, Kings Mountain Bd. of Educ. v. North Carolina State Bd. of Educ.,* 159 N.C. App 568, 575, 583 S.E.2d 629, 635 (2003) (for a *de facto* officer's acts to be valid, there must be circumstances creating a public presumption of legal right); *Keeler v. City of Newbern,* 61 N.C. 505, 507 (1986) (mayor and town council lack public presumption of authority to office, making them usurpers).

Once a public officer is adjudged as illegally in office and exposed as acting without legal authority, any subsequent acts are "absolutely void for all purposes." *Van Amringe v. Taylor*, 108 N.C. 196, 12 S.E.1005, 1007 (1891).

The *Van Amringe* Court eloquently explained the reasoning for this conclusion:

> The ascertainment of the popular will or desire of the electors under the mere semblance of an election unauthorized by law is wholly without legal force or effect, because such election has no legal sanction. In settled, well-regulated government, the voice of electors must be expressed and ascertained in an orderly way prescribed by law. It is this that gives order, certainty, integrity of character, dignity, direction and authority of government to the expression of the popular will. An election without the sanction of the law expresses simply the voice of disorder, confusion and revolution, however honestly expressed. Government can not take notice of such voice until it shall in some lawful way take on the quality and character of lawful authority. This is essential to the integrity and authority of government.

Van Amringe, 108 N.C. at 198, 12 S.E. at 1006. The *Van Amringe* principle applies with particular force here, because of the scope of the constitutional violation in this case. Where nearly two-thirds of all of the districts used to elect the legislature must be redrawn to comply with the state and federal constitutions, the integrity and authority of the legislature is called into question.

On June 30, 2017, the United States Supreme Court issued its mandate in this case. Arguably, under *State v Lewis* and *Van Amringe v. Taylor* upon issuance of that mandate the members of the illegally constituted General Assembly lost the protection of the *de facto* doctrine and became usurpers unauthorized to act to protect the health and

safely of all North Carolinians.[1] It is entirely possible that any legislative actions they take without being elected from legal districts could be subject to challenge under state law. This risk is not merely speculative. One public interest law organization has already publicly indicated its position that:

> Because the General Assembly is now a usurper legislature and their enactments have no binding effect, we believe that the General Assembly is without authority to override Governor Cooper's veto of H576, a bill that would allow landfills to use a new technology to spray liquid garbage waste into the air throughout North Carolina without a permit. Accordingly, if the usurper legislature does attempt to override the veto it opens itself up to litigation wherein the North Carolina State Courts may be asked to issue a declaratory judgment that the law is facially unconstitutional and void ab initio.

Declaration of Derb Stancil Carter, Jr., July 21, 2017, Attachment at 2, filed herewith as Exhibit 2. Moreover, the North Carolina NAACP has taken a similar position, arguing that this court "has strong justification to enjoin the current General Assembly from further convening or enacting any more legislation." Br. of Amicus Curiae of the North Carolina State Conf. of the NAACP, 20 (Doc. 164-3, July 11, 2017). *Cf. Butterworth v. Dempsey,* 237 F. Supp. 302, 311 (D. Conn. 1964 (enjoining the Connecticut legislature from passing any new legislation unless reconstituted in constitutionally-drawn districts, but staying that order so long as the Court's timeframe for enacting new districts is followed).

[1] While the legislature has lost the protection of the *de facto* doctrine under state law, it retains the legal authority under federal law to have the first opportunity to cure the constitutional defect, *Reynolds v. Sims*, 377 U.S. 533, 586, 84 S. Ct. 1362, 1394 (1964), and can act by virtue of this Court's order granting it leave to redraw the unconstitutional districts.

This risk is entirely the product of the dilatory tactics of the General Assembly. This Court should order them to enact remedial districts immediately and conduct special elections before the next session of the General Assembly in order to remove the risk that any acts the General Assembly takes, as usurpers, will be challenged as void *ab initio*.

D. Representative Lewis Cannot Revoke His Waiver of Legislative Privilege

Plaintiffs have subpoenaed Defendant Representative David Lewis, who Plaintiffs believe has information relevant to the issue of how quickly remedial districts can be drawn. Plaintiffs anticipate that Representative Lewis may assert legislative privilege, however, courts disfavor parties strategically taking inconsistent positions on their legislative privilege throughout different stages of litigation. *See Favors v. Cuomo*, 285 F.R.D. 187, 212 (E.D.N.Y. 2012). In his deposition in this case, Representative Lewis was asked "And let me begin, Representative Lewis, by simply confirming that you continue to waive your legislative privilege with regard to this matter." He answered: "With regard to this matter, yes, sir." Dep. of Representative David Lewis, p. 5, lines 4-8, February 5, 2016 (copy attached as Exhibit 3). He cannot now selectively assert the privilege to avoid testifying about facts relevant to the court's considerations of a proper remedy in this case. Moreover, even if the court were to conclude that the legislative privilege can be selectively waived and then asserted within a single case, the privilege is qualified, not absolute, and the circumstances of this case would mandate disclosure of the information that Plaintiffs seek. *See, e.g., Benisek v. Lamone*, No. 13-cv-3233, 2017

U.S. Dist. LEXIS 35396 (D. Md. Mar. 13, 2017) (three judge court) (legislative witnesses not entitled to claim legislative privilege in redistricting case, applying five-factor test).

E. CONCLUSION

Plaintiffs' respectfully request that in conducting the "equitable weighing process" required by the Supreme Court on remand herein, Order at 2, (Doc. 149, June 5, 2017), (per curiam), this court consider the evidence, factual materials, legal authorities and arguments by Counsel already in the record in this matter, including:

1. Pls' Post-Trial Briefing on Remedy, (Doc. 115, May 6, 2016) at 3-14 (irreparable harm suffered by Plaintiffs, authority of court to order special elections, public interest in discontinuing illegal election systems, past experience ordering special elections in North Carolina) and at 15-17 ¶¶ 1,2,6-8 (agreements between the parties still relevant now to determining a special election schedule.)

2. *Stephenson v. Bartlett*, No. 1 CV 02885 (Johnston Co. Sup. Ct.), Pls' Mem. Concerning An Appropriate Remedy (Doc. 115-7, Feb. 19, 2002) at 2-5; 19-22 (why immediate remedy for unconstitutional districts is in the public interest and plaintiffs otherwise suffer irreparable harm); and at 6-19 (measures taken in the past in North Carolina and other states to alter election schedules to remedy unconstitutional plans).

3. Decl. of Gary Bartlett (Doc. 115-9, May 6, 2016) (facts relating to past shortened election schedules and time required for ballot preparation).

4. Deposition Test. of Kelly Doss, Joseph Fedrowitz, Gary Sims (Docs. 115-10, 115-11, and 115-12) (assigning voters to new districts is a quick process, Guilford, Durham and Wake Counties completed it in a few days).

5. Mem. in Support of Pls' Mot. for Additional Relief (Doc. 133, September 30, 2016) at 3-4 (two weeks is a reasonable time to enact a remedial plan), at 5-8 (harm suffered by plaintiffs, examples of special elections ordered in other cases), at 11-12 (courts have the authority to modify election deadlines and state constitutional residency requirements).

6. *Stephenson v. Bartlett,* No. 01-cvs-2885, Johnson County Superior Ct., Order of May 8, 2002 (Doc. 133-1) at 2 (remedial legislative plan required within 12 days, response a day later and a court hearing two days later).

7. *Perez v. Perry,* Case No. 5:11-cv-360, ECF No. 486 at *3 (W.D. Tex. Nov. 4, 2011) and ECF No. 685 at *3 (W.D. Tex. March 1, 2012) filed herein as Docs. 133-3 and 133-4 (shortening the residency requirement in the Texas Constitution in connection with ordering special election schedule).

8. Pls' Reply to Defs' Mem. on Add'l Relief (Doc. 139, Nov. 15, 2016) (time required to enact remedial districts and significance of Defendants' admission that if they have maps drawn by May 1st, they can have a General Election in November).

9. Decl. of Gary Bartlett (Doc. 139-2, Nov. 15, 2016) at 2-3 (administering special elections is not unduly burdensome).

10. Pls' Br. in Opp'n to Defs' Emergency Mot. to Stay (Doc. 143, Dec. 23, 2016) at 7-10 (court has authority to order special elections to remedy unconstitutional districts).

11. Pls' Mot. to Set Deadlines for Remedial Plan (Doc. 150, June 8, 2017) at 1-3 (procedural history of case as it relates to remedy).

12. Proclamation, June 7, 2017 (Doc. 150-1) (Governor's Proclamation to call a special session "for the purpose of enacting new House and Senate district plans for the General Assembly that remedy the legislative districts ruled unconstitutional.)

13. Pls. Statement in Response to Court's Notice of June 9, 2017, (Doc. 156, June 16, 2017).

Based on the facts and legal authorities contained in all of these materials in the record, Plaintiffs respectfully request that the Court give the General Assembly no more than two weeks to enact remedial districts, and require the State of North Carolina to conduct special elections in the affected districts in March of 2018.

This the 21st day of July, 2017.

POYNER SPRUILL LLP

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Counsel for Plaintiffs

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing **PLAINTIFFS' SUPPLEMENTAL BRIEF ON REMEDIES** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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Counsel for Defendants

This the 21st day of July, 2017.

/s/ Anita S. Earls
Anita S. Ear.s

EXHIBIT 2

Declaration of Derb Stancil Carter, Jr., July 21, 2017

IN THE UNITED STATED DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et.al.*,

Plaintiffs,

v.

STATE OF NORTH CAROLINA, *et. al.*,

Defendants.

DECLARATION OF DERB STANCIL CARTER JR.

Derb Stancil Carter Jr., under penalty of perjury, declares the following:

1. This declaration is based on my personal knowledge, information, and belief.

2. I am over the age of 18 and suffer from no legal incapacity.

3. I am the director of the Chapel Hill office of the Southern Environmental Law Center ("SELC").

4. SELC has nine offices across the Southeast, including offices in Chapel Hill and Asheville, NC, and is widely recognized as the region's foremost environmental organization. SELC works on a full range of environmental issues to protect the South's natural resources and the health and well-being of its people. Although its regional focus is the Southeast, much of its work is national in scope and impact.

5. SELC works in Congress and state legislatures, including the North Carolina State legislature to inform environmental laws; in regulatory agencies to implement environmental

laws and policies; and in the courts to enforce the law, stop the worst abuses, and set important precedents.

6. SELC works collaboratively with more than 100 national, state, and local groups to enhance their efficacy and achieve common conservation goals. It currently has a staff of over 130 individuals, with over 70 attorneys, including some of the nation's leading experts in their respective fields. Additional information is available at www.southernenvironment.org.

7. Based on my understanding of the North Carolina Constitution and a review of relevant caselaw, it is the position of SELC that subsequent to the United States Supreme Court's June 30 issuance of the mandate in *Sandra Little Covington et. al. v. The State of North Carolina et. al.* the North Carolina General Assembly ("NCGA") ceased to be a de facto legislature and assumed usurper status. No. 16-649, 2017 WL 2407469, at *1 (U.S. June 5, 2017).

8. In *Covington* the United States Supreme Court held that twenty-eight seats in the NCGA are the result of an unconstitutional racial gerrymander. Multiple other districts will also need to be redrawn to make the district map constitutional. It is the position of SELC that upon the issuance of the mandate in *Covington*, the legislature as a whole assumed usurper status, rendering future actions void ab initio.

9. As such, it is the position of SELC the NCGA no longer has the authority to override gubernatorial vetoes, and will not have that authority until constitutional districts are drawn and a legal, de jure legislature is elected.

10. The General Assembly passed House Bill 576, entitled "Allow Aerosolization of Leachate," on June 15, 2017. On June 30, 2017, the bill was vetoed by Governor Roy Cooper. If the NCGA overrides the gubernatorial veto, it will be by the votes of the supermajorities created by the unconstitutional gerrymandering.

11. Allowing usurpers to continue to enact laws violates the North Carolina Constitution. Article I § 2 of the North Carolina Constitution ("All political power is vested in and derived from the people" and "is instituted solely for the good of the whole."); Article I §8 ("The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given"); and Article I § 19 ("No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.").

12. Therefore, it is the position of SELC that any attempt by the NCGA at the scheduled August 3rd and September 6th legislative sessions to override Governor Cooper's veto of House Bill 576 would be void.

13. Today, July 21, 2017 SELC sent a letter to Governor Roy Cooper, House Speaker Tim Moore, and Senate Pro Tem Phil Berger outlining this position and noting that "if the usurper legislature does attempt to override the veto it opens itself up to litigation wherein the North Carolina State Courts may be asked to issue a declaratory judgment that the law is facially unconstitutional and void ab initio." *See* Attachment 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this twenty-first day of July, 2017.

Derb S. Carter, Jr.

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450 601 WEST ROSEMARY STREET, SUITE 220 CHAPEL HILL, NC 27516-2356 Facsimile 919-929-9421

July 21, 2017

Governor Roy Cooper
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

Speaker Tim Moore
NC House of Representatives
16 West Jones Street, Room 2304
Raleigh, NC 27601-1096

President Pro Tempore Phil Berger
NC Senate
16 West Jones Street, Room 2007
Raleigh, NC 27601-2808

Re: Request Not to Attempt to Override HB 576 "Allow Aerosolization of Leachate"

Governor Cooper, Speaker Moore, and President Pro Tempore Berger:

On June 30, 2017, when the United States Supreme Court issued its mandate in *Covington v. North Carolina*, the North Carolina General Assembly ceased to be a de facto legislature and became usurpers to that office. Article I, § 2 of the North Carolina Constitution proclaims that "all political power is vested in and derived from the people; … and is instituted solely for the good of the whole."

In *Covington*, the United States Supreme Court ruled that 28 districts in the North Carolina legislature were the product of an unconstitutional racial gerrymander. *Covington v. North Carolina* No. 16-649, 2017 WL 2407469, at *1 (U.S. June 5, 2017). As a result, the districts must be redrawn along with many other neighboring districts that will be affected by the reorganization. The North Carolina General Assembly ("the General Assembly") has been writing and passing laws based on these illegal districts for five years now, not as a legally constituted de jure legislature, but as a de facto one. That de facto status is now at an end. *See, e.g., Ryder v. United States*, 515 U.S. 177, 187-88 (1995) (holding that the de facto officer doctrine did not apply prospectively to civilian judges unconstitutionally appointed to the Court of Military Review); *see also State v. Lewis*, 107 N.C. 967, 12 S.E. 457, 458 (1890) (the acts of

an officer elected pursuant to an unconstitutional law are valid if performed *before* the unconstitutionality of the law has been judicially determined (citing *State v. Carroll*, 38 Conn. 449, 473-74 (1871)); *Keeler v. City of Newbern*, 61 N.C. 505, 507 (1868) (mayor and town council lack public presumption of authority to office, making them usurpers).

The General Assembly must cease to draft, debate, and/or pass any new laws until new legislative districts have been drawn and approved and a new, legal,de jure legislature has been constituted. Any new statutes enacted by usurpers have no binding effect and are void ab initio. *State v. Carroll*, 38 Conn. 449, 473-74 (1871) (acts of an officer elected under an unconstitutional law are only valid before the law is adjudged as such); *Van Amringe v. Taylor*, 108 N.C. 196, 12 S.E. 1005, 1007-08 (1891) (actions of usurpers are void).

Article I, § 5 of the North Carolina Constitution proscribes any state law in contravention or subversion of the United States Constitution. No state law adopted in contravention or subversion of the United States Constitution of the United States has "any binding force." The North Carolina Supreme Court ("the Court") has made clear that legislative actions are only valid to the extent they are consistent with the North Carolina Constitution. *Pender County v. Bartlett*, 361 N.C. 491 (2007). The Court has also emphasized that the North Carolina Constitution must be read to conform with its federal counterpart. *Stephenson v. Bartlett*, 355 N.C. 354 (2002). Moreover, where the federal court system needs to be careful not to infringe on state sovereignty, the state court system may go further in crafting a remedy to violations of both federal and state law. *Danforth v. Minnesota*, 552 U.S. 264, 288 (2008) ("The remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law. Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief,'" quoting *American Trucking Assns., Inc. v. Smith*, 496 U.S., at 178–179, (plurality opinion)).

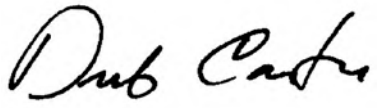
In light of the United States Supreme Court's ruling in *Covington*, it is clear that the current state legislative districts, and by extension the General Assembly itself, violate Article I § 2 of the North Carolina Constitution ("All political power is vested in and derived from the people" and "is instituted solely for the good of the whole."); Article I §8 ("The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given"); and Article I § 19 ("No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.").

In Article I, § 35, the framers of the North Carolina Constitution cautioned "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." Now that a definitive order has issued from the highest court in the land declaring 28 legislative districts—and by implication multiple others—unconstitutional, the members of the North Carolina General Assembly are rendered usurpers in office and can no longer legally operate and impose their will on the sovereign people of this state.

Because the General Assembly is now a usurper legislature and their enactments have no binding effect, we believe that the General Assembly is without authority to override Governor Cooper's veto of H576, a bill that would allow landfills to use a new technology to spray liquid

garbage waste into the air throughout North Carolina without a permit. Accordingly, if the usurper legislature does attempt to override the veto it opens itself up to litigation wherein the North Carolina State Courts may be asked to issue a declaratory judgment that the law is facially unconstitutional and void ab initio.

Sincerely,



Derb S. Carter
Director, Chapel Hill Office

11/06/2018 OFFICIAL GENERAL ELECTION RESULTS - STATEWIDE

Criteria

Election: 11/06/2018
County: STATE
Office: REFERENDA
Contest: PROTECT RIGHT TO HUNT AND FISH

Display Results | Refresh

Statewide Info

Last County Submit:
November 27, 2018 8:55 am

Last County Upload:
November 27, 2018 8:55 am

Precincts Reported:
100.00% (2,706 out of 2,706)

100.00%

Ballots Cast:
52.98% (3,755,778 out of 7,089,657)

52.98%

PROTECT RIGHT TO HUNT AND FISH
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		2,083,123	57.13%
Against		1,563,090	42.87%

11/06/2018 OFFICIAL GENERAL ELECTION RESULTS - STATEWIDE

Criteria

Election: 11/06/2018
County: STATE
Office: REFERENDA
Contest: STRENGTHENING VICTIMS RIGHTS

Display Results | Refresh

Statewide Info

Last County Submit:
November 27, 2018 8:55 am

Last County Upload:
November 27, 2018 8:55 am

Precincts Reported:
100.00% (2,706 out of 2,706)

100.00%

Ballots Cast:
52.98% (3,755,778 out of 7,089,657)

52.98%

STRENGTHENING VICTIMS RIGHTS
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		2,267,210	62.13%
Against		1,382,010	37.87%